

No. 11285.

IN THE  
United States Circuit Court of Appeals  
FOR THE NINTH CIRCUIT

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JOSEPHINE GONZALES,

*Appellant,*

*vs.*

UNITED STATES OF AMERICA,

*Appellee.*

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APPELLANT'S REPLY BRIEF.

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**FILED**

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**PAUL P. O'BRIEN,**  
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Appellee's brief fails to rebut or to even argue the questions presented in Appellant's Opening Brief.

Under the caption "Argument" Appellee's brief enumerates a long list of cases which, it is said, have upheld the constitutionality of the acts involved herein with respect to the "particular evidentiary presumptions which the statutes permit from unexplained possession of narcotics." This neither adds nor detracts from the grounds upon which said statutes are attacked in this appeal.

Appellant's Opening Brief (p. 2) points out that "The presumptions created by the acts herein involved are reasonable and valid," citing a number of decisions which are included in Appellee's said list.

Thus the instant appeal does not question the validity of said presumptions. However, Appellant asserts, and Appellee fails to deny that the particular ground upon which said acts are herein challenged has never been passed upon in any prior decision. It is hornbook law that courts do not themselves look for grounds upon which to hold laws unconstitutional and generally consider and decide only those grounds which are properly presented by the parties.

The instant appeal presents and argues the ground that the words "to the satisfaction of the jury" as the sole measure of the nature, scope and sufficiency of the explanation which a defendant may make, violates the due process clause of the Federal Constitution because it delegates to the jury the function and power of fixing its own standards, or deciding arbitrarily, without any standard or rule what character and measure of the scope and sufficiency of the required explanation shall be in each case. Thus the jury's decision is permitted to be capricious and arbitrary, and a purely legislative function has been unconstitutionally delegated to jurors.

Appellant's brief also asserts and argues that in view of the import of the words "to the satisfaction of the jury" the delegation of power permits inferences to be drawn, even if proper and reasonable explanations are given, as to which there is no logical connection between the premise, to-wit, possession of narcotics, and the fact presumed. This ground of attack, it is claimed, and not denied by Appellee, has never been considered or passed upon by the Federal appellate courts, but renders the Statutes unconstitutional under said due process clause.

The opening brief filed by appellant further shows that the conviction under Count II herein is void because of the further ground that, by the Court's instructions, rulings and statements to the jury, the act therein involved was construed and applied as though it were worded precisely as Section 174 is phrased.

Appellant regards the failure of the Appellee's Brief to discuss these issues as tantamount to admitting the merit of Appellant's said contentions and submits the appeal without further argument.

Respectfully submitted,

GLADYS TOWLES ROOT,

*Attorney for Appellant.*